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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM, 1978

No. 77-648

FEDERAL ENERGY REGULATORY COMMISSION,

Petitioner,

v.

PENNZOIL PRODUCING COMPANY, ET AL.,

*Respondents.***ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT****RESPONDENT PENNZOIL PRODUCING COMPANY'S
RESPONSE TO FILINGS BY
MOBIL OIL CORPORATION AND
LAWRENCE LIGHTCAP, ET AL.****JOHN M. YOUNG***General Attorney**Pennzoil Producing Company**3100 Pennzoil Place**Houston, Texas 77002***JERON STEVENS****STEPHEN M. HACKERMAN***Baker & Botts**3000 One Shell Plaza**Houston, Texas 77002**(713) 229-1234**Counsel for**Pennzoil Producing Company*

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Respondent Pennzoil Producing Company (Pennzoil) recognizes that the filing of additional materials after submission of the briefs on the merits is not a favored practice. Pennzoil is compelled to file this response, however, in view of (1) the inappropriate and unsupported charges made in the Brief of Lawrence Lightcap, *et al.*, (Lightcap) and (2) the unfortunate and equally inappropriate attempt by Mobil Oil Corporation (Mobil) in its "Memorandum" to advance its own interest in a different case at the expense of the real parties in interest in this case.

Mobil and Lightcap are the opposing parties in *Mobil Oil Corp. v. Harry Lightcap, et al.*, No. 76-1694. Neither Mobil nor Lightcap have any direct interest in this case. Rather, to the extent they have any interest in this case it is solely to protect their positions in their own litigation.

Pennzoil recognizes that this case and the *Lightcap* case are in some measure related. It was with this recognition, and on the assumption that any participation by Mobil and Lightcap would be in an effort to advance the issues in this case, that Pennzoil did not object to Mobil's intervention in the court below and consented to Lightcap's request to file a brief *amicus curiae* in this Court. However, neither Mobil nor Lightcap has participated in a manner designed to aid this Court in the resolution of this case. Instead, Mobil and Lightcap have let their own interests spill over into this case regardless of whether it confuses the issues or delays resolution of this case. Thus, while Lightcap now suggests to this Court that the opposing parties in this case in fact have no controversy, Lightcap did not participate before the Commission and, having seen the result reached before the Commission, did not participate before the court below. If Lightcap really believed or had any basis for the unfortunate and unfounded allegations of conspiracy it now makes, it would have attempted to protect its interests at a time far prior to submission of final briefs to this Court. Clearly, Lightcap's brief is not designed to aid the decision in this case, but to protect Lightcap's position in the *Lightcap* case.

Lightcap's charges that Pennzoil and the other parties to this case have not been "forthright, open and candid with this Court" (Lightcap Br. 26) and that there is no real controversy in this case because the parties have conspired to create an issue and hide the real facts from this Court are totally false. Charges so completely divorced from the truth could only be made by one who was not a party and who did not participate in any way at any stage of this matter.

Likewise, Mobil has not actively participated in this case either before the Commission or the court below. Indeed, Mobil did not even file a brief in the court below, nor did it file in opposition to the Commission's petition for a writ of *certiorari*, nor has it filed a brief on the merits in this case. Yet, without an interest sufficient to even cause Mobil to prepare any briefs in *this* case, Mobil now suggests this case be delayed indefinitely until *its* case (*Lightcap*) is decided. Mobil should not be allowed to delay resolution of this case simply to convenience itself in another case.

Furthermore, it is clear that this case can and should be decided regardless of *Lightcap*. The basic issue here is whether the Commission has authority to allow recovery of prudently incurred incremental royalty costs. Whether producers can be forced to make such royalty payments, which is the issue in *Lightcap*, is not at issue here. If this Court grants *certiorari* and reverses *Lightcap*, the question still remains whether the Commission has the authority to allow recovery of such costs if a producer agrees to such payments in an agreement deemed to be prudent. On the other hand, if this Court does not reverse *Lightcap*, the issue of the Commission's authority to allow recovery of such costs, whether incurred by settlement agreement or by court order, will remain. In short, while the two cases are related, this case and *Lightcap* are certainly not interdependent.

If Mobil is concerned about the timing of No. 76-1694, Mobil should seek to advance consideration in that docket. It is inappropriate for Mobil to serve its own ends by seeking to cause delay which could be harmful to the parties in this case.

For the foregoing reasons, Pennzoil respectfully requests that this Court deny Mobil's suggestion that this case be delayed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on all parties on October 10, 1978, in accordance with the rules.

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STEPHEN M. HACKERMAN